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Attorneys for Defendant
 Mellon Financial Corporation

UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF NEW YORK

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RAYMOND VAN COTT	:	07 Civ. 5578 (MKC) (RLE)
	:	
Plaintiff,	:	DEFENDANT MELLON FINANCIAL
- against -	:	CORPORATION'S MOTION TO
	:	<u>DISMISS THE COMPLAINT</u>
MELLON FINANCIAL CORPORATION	:	
	:	<u>ECF FILED</u>
Defendant.	:	
	-----X	

Defendant Mellon Financial Corporation (“Mellon”) hereby moves this Court, pursuant to Rule 12(b) of the Federal Rules of Civil Procedure, that the Complaint against it be dismissed on the following grounds:

1. Plaintiff's common law cause of action is preempted by the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 *et seq.*, as amended (“ERISA”).
2. Mellon is not a proper party to the claim raised in the Complaint.
3. Plaintiff has failed to name an indispensable party, the Mellon Financial Corporation Displacement Program.
4. Support for the present Motion is found in the separately filed Affidavit of Audrey F. Bonnett, the attachments thereto, and the brief filed herewith, all of which are incorporated herein.

The motion shall be heard at the United States Courthouse at Courtroom 14A, 500 Pearl Street, New York, New York at 10:15 a.m. on September 27, 2007, or at such other time as the Court directs.

WHEREFORE, Defendant Mellon Financial Corporation prays that this Complaint be dismissed in its entirety with prejudice.

Respectfully submitted,

REED SMITH LLP

By:


Paul P. Rooney
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Attorneys for Mellon Financial Corporation

Dated: July 16, 2007
New York, New York

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Mellon Financial Corporation

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
RAYMOND VAN COTT : 07 Civ. 5578 (MKC) (RLE)
: :
Plaintiff, : :
- against - : :
: : **ORDER OF COURT**
MELLON FINANCIAL CORPORATION : :
: :
Defendant. : :
-----X

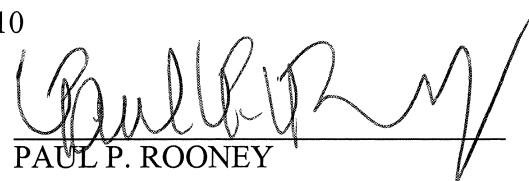
AND NOW this ____ day of _____ 2007, Defendant Mellon Financial Corporation having filed a motion to dismiss the Complaint against it, the Plaintiff having responded and the Court having given the matter due consideration, **IT IS ORDERED** that the motion be, and the same hereby is, **GRANTED**.

J.

CERTIFICATE OF SERVICE

I, Paul P. Rooney, Esq., hereby certify that on July 16, 2007, I caused the annexed DEFENDANT MELLON FINANCIAL CORPORATION'S MOTION TO DISMISS THE COMPLAINT to be served upon Plaintiff's counsel listed below by filing it with the Court by means of the Court's Electronic Case Filing system pursuant to Fed. R. Civ. P. 5 and Local Civil Rule 5.2:

Tracey S. Bernstein
Himmel & Bernstein, LLP
928 Broadway, Suite 1000
New York, New York 10010



PAUL P. ROONEY

A handwritten signature of "Paul P. Rooney" is written over a horizontal line. Below the line, the name "PAUL P. ROONEY" is printed in capital letters.

Dated: July 16, 2007